

Putnam



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gene C. Nicko - Broker's Commission Fee
File: B-232313
Date: January 9, 1989

DIGEST

A transferred employee who sold his residence at his old duty station claims reimbursement of an 8 percent broker's commission fee. The local Housing and Urban Development (HUD) office advised that the customary broker's commission fee in the locality is 7 percent. Absent sufficient evidence submitted by the employee that the customary charge is greater, the determination by HUD is controlling, and his claim is limited to 7 percent.

DECISION

This decision is in response to a request by Mr. Charles V. Tretler, Acting Chief, Appropriations Branch, National Finance Center, United States Customs Service, Department of the Treasury, concerning the claim of Mr. Gene C. Nicko, an employee of the agency, for reimbursement of a broker's commission fee he paid in the sale of his residence at his old official station. The Customs Service allowed a fee of 7 percent based upon the determination by the local office of the Department of Housing and Urban Development (HUD) that a 7 percent broker's commission fee is customary in the locality.

Mr. Nicko seeks reimbursement of an 8 percent fee, and he states that prior to selling his former residence, he was advised by Customs Service officials that as long as the total cost of the sale fell under 10 percent, it would be allowable. Further, he argues that HUD is paying 8 and 10 percent broker's commission fees on its properties and that the Federal National Mortgage Association and the Colorado Housing Authority are paying 9 percent and 8 percent respectively in broker's fees in sales of their properties.

The statutory authority for the reimbursement of real estate expenses is contained in 5 U.S.C. § 5724a(a)(4) (1982) and

044378/137229

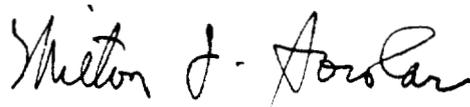
provides for reimbursement of the expenses of the sale of an employee's residence at his or her old duty station. However, the statutory provision states that reimbursement for brokerage fees on the sale of a residence may not exceed the amount customarily charged in the locality where the residence is located. The implementing regulation is paragraph 2-6.2a of the Federal Travel Regulations (FTR) (Supp. 4, Aug. 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

We have consistently held that the above-cited statutory and regulatory provisions require that the applicable broker's commission fee be the fee generally and customarily charged by real estate brokers in the locality of the old official station. See George C. Symons, B-188527, Jan. 26, 1978; Robert W. Freundt, B-181129, Aug. 19, 1974. The information provided by HUD creates a rebuttable presumption as to the customary and prevailing rate in such locality. See Calvin T. Westmoreland, B-196517, Feb. 19, 1980.

Mr. Nicko argues that broker fees higher than 7 percent are being charged in the locality of his old duty station. However, this does not mean that 7 percent is not the customary charge in the locality. See Doss H. White, Jr., B-197908, Apr. 21, 1980. The local HUD office verified that the customary rate for broker's commission fees in the locality of Mr. Nicko's old official station is 7 percent. We do not find Mr. Nicko's contentions to be sufficient to rebut the presumption created by the HUD determination.

Finally, Mr. Nicko argues that, prior to the sale of his residence at his old duty station, he was advised by Customs Service officials that as long as the total cost of the sale fell under 10 percent, an 8 percent broker's fee would be allowable. However, such advice is not binding on the government since the United States is not bound nor estopped by the negligent or erroneous acts or advice of its agents or employees, even though committed in the performance of their official duties. William R. Walberg, 58 Comp. Gen. 539 (1979); White, B-197908, supra.

Accordingly, Mr. Nicko's claim for reimbursement of an additional broker's commission fee of 1 percent may not be paid.


for Comptroller General
of the United States